

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the matter of	)	
	)	
Amendment of Section 73.202(b)	)	
FM Table of Allotments,	)	MB Docket No. 03-98
FM Broadcast Stations,	)	RM-10688
(Seymour and Sellersburg, Indiana)	)	

### NOTICE OF PROPOSED RULEMAKING

**Adopted: May 28, 2003**

**Released: May 30, 2003**

**Comments Date: July 21, 2003**

**Reply Comments Date: August 5, 2003**

By the Assistant Chief, Audio Division:

1. The Audio Division has before it a petition for rule making filed on behalf of INDY LICO, Inc., licensee of Station WGRL(FM), Channel 230A, Noblesville, Indiana, and S.C.I. Broadcasting, Inc., licensee of Station WQKC(FM), Channel 229B, Seymour, Indiana ("Petitioners"),<sup>1</sup> proposing the substitution of Channel 230A for Channel 229B at Seymour, Indiana, and the reallocation of Channel 230A from Seymour to Sellersburg, Indiana, as the community's first local transmission service, and the modification of the license for Station WQKC(FM) to reflect the changes.<sup>2</sup>

2. Petitioners filed this proposal for reallocation in accordance with the provisions of Section 1.420(i) of the Commission's Rules, which permits the modification of a station's license to specify a new community of license while not affording other interested parties the opportunity to file competing expressions of interest in the proposed allotment.<sup>3</sup> In considering a reallocation proposal, we compare the existing allotment to the proposed allotment to determine whether the reallocation will result in a preferential arrangement of allotments. This determination is based upon the FM Allotment priorities.<sup>4</sup>

3. In support of the petition, Petitioners state that Channel 230A can be allotted at Sellersburg in accordance with Section 73.207(b) of the rules, and it will place a 70 dBu signal over the entire community from the proposed reference point. The allotment will provide the Sellersburg, 2000 U.S. Census population of 6,071 persons, with its first local aural transmission service, and will not deprive Seymour, 2000 U.S. Census population of 18,101 persons, of its sole local aural transmission

<sup>1</sup> Petitioners have the same parent corporation. In the event that Channel 229B is removed from Seymour, INDY LICO would be able to relocate the Station WGRL transmitter site.

<sup>2</sup> This proposal was originally filed as an amended petition at the deadline for counterproposals in MM Docket No. 01-143. That docket has been terminated, and this *Notice* is simultaneously initiated to consider the amended proposal as a new petition for rule making.

<sup>3</sup> See *Change of Community R&O*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990).

<sup>4</sup> See *Revision of FM Assignment Policies and Procedures*, 90 FCC2d 88, 91 (1988). The FM Allotment priorities are (1) First full-time aural service. (2) Second full-time aural service. (3) First local service. (4) Other public interest matters. [Co-equal weight is given to priorities (2) and (3)].

service. Stations WZZB(AM) and WJLR(FM) will remain licensed to Seymour. Petitioners also state that this proposal will eliminate the existing short spacings to Stations WMMG-FM, Channel 228A, Brandenburg, Kentucky, and WCFJ, Channel 229B, Miamisburg, Ohio. Finally, Petitioners claim that the Sellersburg relocation will permit them to serve an additional 893,620 listeners. The areas losing service will continue to be well served by more than five aural signals.

4. Petitioners also note that Sellersburg is within the Louisville, Kentucky, Urbanized Area. Petitioners provide a showing that Sellersburg is an independent community deserving of a first local service preference. This showing is based on the factors enumerated in *Faye and Richard Tuck*.<sup>5</sup> We seek comment on this showing.

5. We believe that this proposal warrants consideration because it could eliminate four short spacings, could provide a large community with its first local service, and could give an additional aural service to almost 900,000 persons. An engineering analysis shows that Channel 230A can be allotted at Sellersburg at a site 11.5 kilometers (7.1 miles) south of the community.<sup>6</sup>

6. Accordingly, we seek comment on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>Community</u>	<u>Present</u>	<u>Channel</u>	<u>Proposed</u>
Seymour, Indiana	229B		---
Sellersburg, Indiana	---		230A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached *Appendix* and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the *Appendix* before a channel will be allotted.

8. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, interested parties may file comments or counterproposals on or before July 21, 2003, and reply comments on or before August 5, 2003, and are advised to read the *Appendix* for the proper procedures. Comments should be filed with the Federal Communications Commission, Office of the Secretary, 445 Twelfth Street, SW, TW-A325, Washington, D.C. 20554. Additionally, a copy of such comments should be served on Petitioners' counsel, as follows:

Mark N. Lipp, Esq.  
J. Thomas Nolan, Esq.  
Vinson & Elkins L.L.P.,  
The Willard Office Building,  
1455 Pennsylvania Avenue, N.W.,  
Washington, D.C. 20004-1008  
(Counsel to Petitioners)

9. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-

<sup>5</sup> *Faye and Richard Tuck*, 3 FCC Red 5374 (1988).

<sup>6</sup> Channel 230A can be allotted at Sellersburg at coordinates 38-17-41 NL and 85-45-07 WL.

delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail or Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12<sup>th</sup> Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules.<sup>7</sup>

11. For further information concerning this proceeding, contact Victoria M. McCauley (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a *Notice of Proposed Rule Making* until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioners constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

#### FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Assistant Chief, Audio Division  
Media Bureau

Attachment: Appendix

<sup>7</sup> See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Makings to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this *Appendix* is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. The person filing the comments shall serve comments on the petitioners. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. A certificate of service shall accompany such comments and reply comments. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Information Center, at its headquarters, 445 12th Street, S.W., Washington, D.C.